

DRAFT:

THE 2018 ON-PREMISES BANQUET LICENSE STUDY
Conducted by the Department of Alcohol Beverage Control

EXECUTIVE SUMMARY

In General Session 2018, the Legislature tasked the Department of Alcoholic Beverage Control (“DABC”) to conduct a study on the use of banquet catering contracts and the operations of the on-premises banquet license, identifying any issues and recommending potential legislative solutions, if applicable. During the course of that study, the DABC determined:

1. Under the “express language” provision of 32B-1-104, DABC lacks the authority to set parameters for banquet licensees, as it has historically.
2. The majority of banquet license holders use their license according to DABC’s rules (86%).
3. A minority of banquet license holders engage in practices that do not conform, but their behavior can be corrected through additional education and training (7.5%).
4. A minority of banquet license holders engage in practices that will likely require legislative action if they are to continue (6.5%).

The following potential legislative actions are suggested and discussed in further detail in the report:

1. Consider language authorizing DABC to make rules governing banquet catering licensees.
2. Consider a “public venue” license or permit for larger arenas.
3. Consider technical clarifications regarding terms in the banquet catering and reception center statutes.
4. Consider clarifying the role that the banquet catering license and the Type 4 package agency license play in delivering “room service” in different circumstances.

INTRODUCTION

This study resulted after efforts to create an “arena license” during the 2018 General Session. The arena license concept stemmed from a patron’s inability to carry a beer from the “Toyota Club,” which operates under a banquet catering license, into the main arena at Vivint Smart Home Arena, which operates under a beer recreational license. Both license types have a designated premises. Consequently, patrons would have to throw away a beer purchased on one premises and obtain a new one on the other premises.

An “arena license” was initially proposed as part of HB 456 to solve the portability issue at Vivint and similar venues. Working on this issue, however, raised concerns for the Department regarding the possibility of indirect sales of alcohol and banquets being held open to the public. Stakeholders also indicated that these issues were not limited to arenas. Based on these and other concerns, the

proposed arena license language was removed from HB 456 and UCA 32B-6-605.1 was enacted, requiring this study and a written report.¹

In the course of conducting the study, the DABC also determined it did not actually have rulemaking authority to define the parameters of banquet contracts. Rather, it appears that DABC implemented “rules” to guide licensees on what constitutes an appropriate banquet based on common practice rather than statutory authority. To provide greater context for the issue of DABC’s policies on banquet catering, it is relevant to note that the banquet catering statute predates the reception center statute, which is very similar in construction and purpose and which does grant DABC rulemaking authority. The rules made by DABC pursuant to the reception center statute mirror closely the rules that DABC had been applying to banquet catering. DABC recommends that the Legislature pass legislation granting the DABC rulemaking authority to formalize these long-standing practices.

For the purpose of conducting this study and this report, however, DABC used the rules that it has applied historically as the standard for appropriate usage of a banquet catering license.

Part 1. HOW ARE BANQUET LICENSES CURRENTLY USED?

Banquet catering licenses are used by a variety of businesses, though according to statute and rule, only certain types of businesses are supposed to have them. Table I shows that while the bulk of banquet catering licenses are held by hotels, they are also held by other businesses.

TABLE I

BANQUET CATERING LICENSE HOLDERS	
TYPE	NUMBER
Hotels (main & subordinate)	80
Resorts (subordinate)	2
Concessionaires	7
Conference Centers	6
Event Centers	7
Sports Arenas	4
Miscellaneous	6

¹ To obtain information regarding present use of on-premises banquet licenses, all holders of an on-premises banquet license, whether as a main or subordinate license, were asked to submit their 2018 contract reports for review by DABC. Licensees that did not respond were referred to their assigned compliance officer for follow up. Any licensee that was found to be deviating significantly from a standard banquet event was visited in person and questioned about the use of their banquet license. In addition, DABC requested input from licensees regarding their concerns with regulations pertaining to on-premises banquet catering license.

DABC also reviewed Utah code and rules to identify possible issue areas and contacted the National Conference of State Liquor Administrators (NCSLA) to determine how other states handle these issues.

MOST LICENSEES ARE USING APPROPRIATE BANQUET CONTRACTS

The review of the contract reports submitted by on-premises banquet catering license holders showed that most licensees are conducting banquets in a manner consistent with DABC's understanding of code and rules. That is, they hold banquet events using contracts that involve:

- a) a third party host for a private banquet event to be held on the banquet licensees' premises;
- b) terms that included use of a specific private room or rooms for meeting, socializing, training, entertaining, or other private functions;
- c) terms identifying specific times, dates, or other banquet requirements; and
- d) terms for the provision of food, a hosted bar, a cash bar, or both.

As shown in Table II, below, about 86% of responding licensees held banquet events in conformance with DABC's understanding of what constitutes a compliant banquet event. Fourteen percent (14%) of the respondents held nonconforming events.

TABLE II

RESULTS – LICENSEE CONTRACT REPORT REVIEW		
	NUMBER	PERCENTAGE
Conforming	80	86%
Nonconforming – Additional Education Required	7	7.5%
Nonconforming – Legislative Changed Required	6	6.5%
*DABC received responses from 93 of the 112 on-premises banquet catering license holders.		

SOME LICENSEES DEVIATE FROM STANDARD PRACTICE

A relatively small number of on-premises banquet catering licensees held nonconforming banquet catering events. The nature of nonconforming practices that were identified can be grouped into two categories:

- a) “Educational” – these events occur infrequently and the offending practices can be addressed or remedied through additional DABC-training; and
- b) “Legislative” – the frequency with which the events occur suggests that legislative solutions may be required.

Educational Opportunities

The following is a list of some of the practices discovered during the review process that may easily be addressed via training and education:

- a) Licensees hosting banquets for themselves (contracting with themselves to hold private or public events);
- b) Licensees holding events open to the public like a “New Year’s Eve Gala” or “Mother’s Day Dinner” while using their banquet license instead of getting a single event permit; or
- c) Licensees not meeting the room size requirement for their type of venue.

Legislative Opportunities

The biggest anomalies all occurred in large sporting event centers and one resort facility. In all instances, these entities are engaging in practices that are commonplace nationwide, as they attempt to compete with similar venues in other states. The following are examples of noncompliant practices the DABC found during its study:

1. **Holder of the license is not the owner of the facility.** This may be an issue as there is no “express language” (see 32B-1-104 (2)(b), allowing a facility to contract with a third party to hold the banquet license. For example, one arena which is owned by a municipality contracts with a concessionaire to hold its banquet license.
2. **Lack of appropriate contract.** Some arenas hold banquet events in “clubs” in the building and certain VIP ticket holders have access to the clubs, with no third party host or contract in place.
3. **“Banquets” held open to the public.** The “clubs” in many of the arenas are run more like a bar, except in at least one arena, where minors are allowed into the clubs.²
4. **Indirect sale of alcohol.** One arena holds a banquet license but uses a concessionaire to utilize the license on a contractual basis. This arena allows the concessionaire to collect all the money from alcohol sales at their “club.”
5. **Facility does not meet the logistical requirements for a banquet.** One arena contracts for their own “VIP Room” areas, which are actually cordoned off sections of a public area, and rents those “rooms” to individuals—essentially, the rooms are open to the public, absent a contract between the holder of the banquet license and the individuals purchasing the alcohol. These “rooms” do not meet statutory size requirements and are not staffed like a typical banquet would be under a normal banquet catering contract.
6. **Use of Type 4 package agency for “room service.”** Several large venues utilize a Type 4 package agency permit to provide “room service” at their venues. This also brought up the question of how Type 4 package agency permits are used at hotels and resorts, and how “room service” offered under a banquet license differs from “room service” offered under a Type 4 package agency. This lead DABC to conclude that there is a lack of clarity between

² At one point, one of the arenas in question held a bar/club license, but it became impractical because a bar/club license requires notifying DABC every time the licensee “closes” for 10 days or more and these arenas are not open for business on a regular basis.

statutes and rules governing businesses that provide room service, which would benefit from legislative action.³

In DABC’s determination, though many of Utah’s large arenas hold banquet licenses and engage in practices that do not fit within the appropriate guidelines for a banquet license, there is no other license type that is a better fit for their business model. This raises the question—do the types of licenses the state currently offers allow these businesses the ability to compete in the marketplace *and* comply with state law?

Part 2. HOW DO OTHER STATES HANDLE LARGE EVENT CENTERS?

DABC asked the National Conference of State Liquor Administrators (NCSLA) to see how other states handle large event centers and alcohol. Four states responded: Louisiana, Indiana, Montana, and Pennsylvania. Each state generally fit into one of two regulatory schemes: event-based or venue-based.

Event-based

Both Louisiana and Indiana handle special facilities in similar ways. In Louisiana, the commissioner has authority to put certain control restrictions on licenses (similar to Utah’s single event permits) so events are handled on a case-by-case basis, with each applicant explaining their process and how they will abide by the law during their event. Montana also uses event permits for large arenas, but on a more permanent basis.

Venue-based

Indiana has made exceptions for arenas as well as some other license types. They do have a specific license for “entertainment facility.” Similarly, Pennsylvania has a “public venue” license that operates similarly to a restaurant, with sales of alcohol at the event generally authorized for one hour before, during, and one hour after an athletic performance, performing arts event, trade show, convention, banquet, or similar performance at the facility.

Part 3. RECOMMENDATIONS

Following the study, DABC reached the following conclusions:

1. The DABC lacks sufficient rulemaking authority to regulate banquet licenses. Legislation is desirable.
2. Most banquet licensees are behaving appropriately and any considered regulatory changes should allow those practices to remain the same.

³ In addition to the two systems for room service, there is a lack of clarity on definitions. “Resort facility,” “Resort license,” and “resort” are used interchangeably in Title 32B and administrative rules, yet they seem to have different meanings depending on the context.

3. Most large arenas are trying to remain competitive in a national market, but there is not a good regulatory scheme that fits what they are doing in practice. A legislative fix is desirable, clarifying the scope of the banquet license and potentially creating an “arena” type license for events and businesses that do not fit neatly within the banquet paradigm. A Pennsylvania model might be a good fit for our state’s regulatory scheme.
4. Clarification is needed on the room service issue. Legislation is desirable.